

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jeffrey Denton,
Andre Tucker,

Plaintiffs,

v.

Columbia Motors Inc., et al.

Defendants

Lead Docket: 1:02-cv-00422-SSB-TSH
Related Cases: 1:02-mc-00020-SSB-
THS

1:02-mc-00020-SSB-TSH

Sandra S. Beckwith, Judge
Timothy S. Hogan, Magistrate

Affidavit of Andre Tucker

State of Ohio }
 } SS
Hamilton County }

Andre Tucker, being duly sworn, deposes and says:

1. I am a plaintiff in this action, and make this affidavit in opposition to the motion for summary judgment filed on behalf of defendants.

2. The following facts are relevant to the issues involved in the above-entitled action:

a. I was employed by Columbia Motors Inc. as a lube technician, however, the assistant service manager, Robert "Bob" Brodigan, a Caucasian, told me that there at the time there were no lube bays available and would not be for the next three (3) to six (6) months. Mr. Brodigan told me that during the mean time, I would be assigned to car wash duties, and that would be first in line for the next available lube bay.

b. When I was hired; I was not informed that pranks were common in the service area.

c. I was washing my hand in the restroom. Mr. Denton was on the toilet. Mr. Mark Frye, a Caucasian, turned off the lights in the restroom, sprayed brake cleaner on the floor and on Mr. Denton's work boots, and ignited the brake cleaner. This caused Mr.

Denton's shoes to burn. Mr. Denton got off of the toilet and ran out of the restroom attempting to put out the flames on his shoes.

d. Both Mr. Denton and I reported this incident to Mr. Brodigan. Mr. Brodigan's response was to laugh and say that they do that to "Rocky" all the time. "Rocky" is the nick name for Richard Fredericks, the janitor.

e. No disciplinary action was taken as a result of this incident.

f. Both Mr. Denton and I began to worry about our safety at work.

g. Subsequently, I was surprised when my employer classified the placing of poisonous break cleaner, which is clear and odorless, on Jeff Denton's food and in his coffee. Mr. Denton is Negroid.

h. Mr. Denton discovered the presence of the poisonous break cleaner in his coffee only by the fact that the poisonous break cleaner ate through the Styrofoam coffee cup.

i. I do not consider the act of putting poisonous break cleaner to be a "prank" because it has the potential of causing serious injury and death.

j. Frequently, Enterprise delivered donuts to the service area. Mr. Denton asked me to get him donut. Before I could, I had a duty to perform, and while I was performing my duty, Mr. Denton took the only remaining donut and the box to his work station. When I returned I heard Harry (I do not know Harry's last name) and Scott Dick talking about injecting the last donut with hot sauce. They asked me who got the last donut and I told them Mr. Denton. They began to laugh and said that they had injected it with hot sauce. I immediately ran over to Mr. Denton's work station and told him not to eat the donut because it had been injected with hot sauce.

k. Mr. Denton and I reported this incident to Mr. Brodigan. Mr. Brodigan's response was to tell Mr. Denton just to throw it away because there were more up front. No other action was taken.

l. The next incident in Mark Lovens who brought a rifle to work. While talking with the dispatcher, who I only know as Mark, I was standing next to Mr. Denton when the dispatcher told me to move and pointed the rifle at Mr. Denton.

m. While this was taking place, Mr. Brodigan arrived and saw what was happening. Mr. Brodigan yelled to take that "dammed" gun out of the service area and never bring it back. There was no Employee Disciplinary Report made concerning this incident.

n. My duties required me to acquire vehicles from the service racks and take them to the car wash area where they were washed.

o. I acquired a vehicle that Mr. Denton had finished and took it to the car wash area. After the car was washed I delivered it to the customer just outside of the service area.

p. I was returning to the car wash area on my way to the restroom when I noticed that Jeff Watts, Tom Carey, Mark Frye, and Scott Dick, all Caucasians, were laughing. I asked them what was so funny just as I noticed a hose that was attached to the exhaust pipe of a running vehicle was positioned next to a fan used to move air into the break room where Mr. Denton was recovering from being indisposed. There was something blocking the door to the break room so that the door could not be opened from the inside. I kicked open the door to the break room. The exhaust was so dense that at first I could not see Mr. Denton. Finally, Mr. Denton walked in my direction and I was

able to see him. The exhaust was carbon monoxide, a colorless, odorless, highly poisonous gas, formed by the incomplete combustion of carbon or a carbonaceous material, such as gasoline.

q. Subsequently Messrs. Watts and Frye admitted to Mr. Brodigan that not only had they attached the hose, but also that the engine of the vehicle to which the hose was connected had upper cylinder head cleaner which produces an odor and a bunch of fumes along with carbon monoxide.

r. Jim Peters, the service manager was not available and was not informed of the incident for at least four days.

s. As a result of the incident, Mr. Denton became ill and left work.

t. When Mr. Peters returned, an Employee Disciplinary Report involving the incident involving Messrs. Watts and Frye was completed. No other action was taken by defendant concerning this incident at that time.

u. After this incident management treated me differently by substantially increasing my duties while at the same time allowing Mr. Umfelder, who was supposed to be assisting me, to continue to goof off and be away from the work area.

v. It is my opinion that the increase in my duties was in retaliation for my blowing the whistle on Messrs. Watts and Frye.

w. I was worried about what was going on at work and was concerned for my safety. As a result I employed a lawyer. After explaining to the lawyer what was happening at work, he instructed to file a complaint with EEOC which I did on July 20, 2000.

x. Shortly after I filed charges with the EEOC, defendant began making

falsely accusations against me.

y. It is my opinion that the management was accepting as true, false accusations against me in retaliation of having received notice of my EEOC complaint.

z. The first false accusation was made by Scott Dick, a Caucasian. He claimed that I had five (5) weapons in my hand at work on a Saturday.

aa. The following Monday, Mr. Brodigan told me about Mr. Dick's accusations and without asking me if it happened, or if it was true, he fired me. He said that I had a golf club, a throwaway pistol, a knife, a baseball bat and a crowbar all in my hands at once while walking though the service area.

bb. I did not have any of those weapons at any time.

cc. Several days later, I went to defendant to turn in my uniforms and pickup my pay check. When I arrived, I was instructed to see Mr. Stewart defendant's general manager, who had my pay check.

dd. In Mr. Stewart's office, in my presence, Mr. Stewart told Mr. Brodigan, that he gets too emotional and should have brought the accusations about my having weapons in the service area to his attention before firing me. Mr. Stewart then told me to take three (3) day off with pay and then to return to work.

ee. I followed Mr. Stewart's instruction and took three (3) day off for which I was paid and returned to work on the fourth day.

ff. After returning to work, Mr. Frye, clocked himself and Mr. Denton out and told Mr. Denton that he was going to "kick his ass."

gg. When Mr. Denton reported this incident to Mr. Brodigan, Mr. Brodigan did not complete a Employee Disciplinary Report, but only told Mr. Frey that if it was

brought to his attention again about him clocking out another employee's time card, he would be fired.

hh. Subsequently, someone hung a six (6) foot doll by the neck in the service area directly adjacent to Mr. Denton's tool box. The doll was wearing a Columbia work uniform; the head of the doll was shrouded with a white cloth on its head. Eyeholes had been cut in the shroud. Richard "Rocky" Fredericks took a photograph of the doll which he gave to the EEOC.

ii. The only response to this incident was Mr. Brodigan saying generally that whoever was responsible for hanging the doll should take it down.

jj. When no one responded, the janitor, Richard "Rocky" Fredericks took the doll down.

kk. Gary Umfelder, who was assigned to help me with car wash duties, threatened to have an Iron Horseman kill me and that he was going to bring his nine (9) milometer berretta to work and blow my brains out. These threats were made in the presence of Mr. Brodigan, the assistant service manager, and Eddie Berkley, who was assigned to new car detain work. Mr. Umfelder is Caucasian.

ll. Upon hearing the threats, Mr. Brodigan's only response was to tell us to get back to work. Nothing else done about the threats.

mm. Although Gary Umfelder's job was to assist me in car wash duties, he refused to work and disappeared for hours.

nn. I reported to Jim Peters, the service manager and to Mr. Brodigan that Mr. Umfelder was not helping and was not performing his duties.

oo. In response to my frequent complaints about Mr. Umfelder's failure to help,

Mr. Brodigan said that Mr. Umfelder had a long history of refuses to help which caused nineteen (19) persons who had been assigned car wash duties to quit.

pp. After Mr. Denton and I filed the EEOC charges, Harry (I do not know his last name, but he was one of the men that injected the donut with hot sauce) in my presence said to Mr. Denton that we were trying to destroy Columbia Oldsmobile.

qq. About thirty (30) minutes later, Harry tried to throw hot coffee on Mr. Denton, but because of a fan, it did not hit Mr. Denton, but was blown back onto Harry.

rr. I was present when Mr. Denton reported the incident to Mr. Peters.

ss. Mr. Peters asked Harry if Mr. Denton's statements were true. Harry answered that they were and Mr. Peters fired Harry.

tt. The next incident involved a black Barbie doll. Mr. Frye, Mr. Watts, and Mr. Carrey placed a noose around the neck of the Barbie doll. They placed Brake cleaner on the floor in the shape of a cross. They placed the Barbie doll on the cross and ignited the brake cleaner which consumed most of the Barbie doll. This was done next to where Mr. Denton was working.

uu. I considered the burning of the cross which consumed the black Barbie doll to be a hate crime which caused me to fear for my life.

vv. In my presence, Mr. Denton reported the incident to Mr. Brodigan. Mr. Brodigan's response was that he did not see a Barbie doll, but only saw the burnt floor. Mr. Denton responded that Messrs. Frey, Watts, and Carrey had kicked the doll away when they saw Mr. Brodigan coming. Mr. Brodigan did not investigate or attempt to locate the black Barbie doll. Nothing further was done concerning this incident.

ww. The next incident involved Mr. Watts bring up a picture of my home on the

internet and editing and animating it to make it look like a crack house. He made it appear that Mr. Denton was under a car and was being covered with oil and that I was driving in a car past the house captioned, "I guess I will be cruising the hood now." It also showed crack babies crawling across the lawn and people hanging out of the windows of the house smoking crack.

xx. When Mr. Brodigan saw what was on the screen, he told Mr. Watts to take that off the screen. Instead, Mr. Watts printed it out and taped on the door leading to the door to the break room with a note that "this is Jeffrey's home." When ever a member of management came near the door, Mr. Watts or Mr. Frye would take it down and when they left the area, it was put back.

yy. Both Mr. Denton and I reported to Mr. Brodigan that what he had seen on the computer screen had been printed and posted on a door. Mr. Brodigan looked at the door, said he did not see anything. Nothing was done about this incident.

zz. The next incident involved a water bomb. Messrs. Frye and Watts made the water bomb by filling a plastic container with water into which they introduced an air hose. Then they caused air to enter the water and explode and spray all over Mr. Denton, his tools and papers. The explosion was so loud that Mr. Brodigan came out of his office and asked what was the noise? Mr. Denton answered that the loud noise was a water bomb which soaked him, his tools, and papers.

aaa. Mr. Brodigan's response to tell everyone to "quit the play and get back to work".

bbb. Subsequently, Messrs. Frye and Watts ignited a pack of fire crackers next to Mr. Denton's tool box about a step and one-half away from Mr. Denton while Mr.

Denton was changing the oil of a vehicle. They used a long wick to allow them to get out of the area before the explosion, but were seen laughing after the explosion.

ccc. I was not present when Mr. Denton reported this incident. Nothing was done as a result of Mr. Denton reporting the incident.

ddd. Later, while Mr. Denton was doing an oil change, he informed Jerry Fields, the parts manager, of the amount of oil he needed for the vehicle and then set the gauge to dispense the correct amount of oil. When he introduced the oil hose to dispense the oil into the vehicle, it dispensed approximately three (3) quarts more than Mr. Denton had entered on the machine. The excess oil covered the engine of the vehicle and the floor and required a long time to clean.

eee. After this incident, Mr. Fields told Mr. Brodigan that he saw Mr. Frye fooling with the controls after Mr. Denton had set the amount of oil to be dispensed. In response, Mr. Brodigan told Mr. Frye not to touch the oil gauge after it was set. An Employee Disciplinary Report was not made involving this incident nor was anything done to Mr. Frye. Mr. Denton cleaned the vehicle and Rocky cleaned the floor.

fff. A picture drawn on a restroom stall depicted a boat and a black person with the words "You people go back to Africa." Another picture was of a man bent over with a penis inserted in his rectum with the words "Take them with you."

ggg. The pictures in the restroom stall made realize Columbia Motors Inc. was a hostile work environment and again put me in fear of my life.

hhh. About two (2) weeks after I reported the pictures to Mr. Peters and Mr. Brodigan, the entire restroom was painted.

iii. During the entire time that the foregoing events were happening, the

Caucasian employees were saying that I was a “lazy nigger” and I was told “you people have to go back to Africa”. Rocky also heard the statements. When I told management what was being said, I was told that nothing could be done because I did not have enough proof. After that I stopped reporting these incidents.

jjj. Management was doing everything to establish a reason to terminate me and Mr. Denton. For example, Exhibit ten (10), page two (2) to the moving papers is a work order dated June 2, 1999, involving a 1997 Olds Silhouette, for which a Employee Disciplinary Report, Exhibit 8 to defendant’s moving papers, was completed on February 21, 2000, more than six (6) months after the work was done.

kkk. I was terminated on June 26, 2000 and not on the other dates set out in defendant’s moving papers. When I was terminated, I told it was because I had threatened to do something to Gary Umfelder and that I called him a “fuck boy”. Management would not tell me what I was alleged to have said I was going to do to Mr. Umfelder. I was not asked if what Mr. Umfelder alleged that I said was true; instead, management simply accepted it as true.

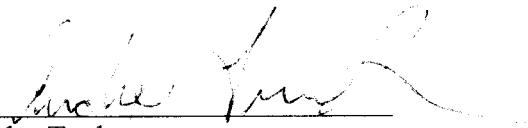
lll. I believe I was terminated, not because of the stated reason, but because I am Negroid and complained that Columbia Motors Inc. was a dangerous place for a black man to work because of all the things the Caucasian employees doing to me and Mr. Denton. In place of instigating the causes of the work disruptions, it was just easier to fire me because I was frequently a witness to what was being done to Mr. Denton and always reported what I saw and heard.

mmm. The pictures in the restroom stall, the burning of a cross which consumed a black Barbie doll, locking Mr. Denton in the restroom/brake room while pumping carbon

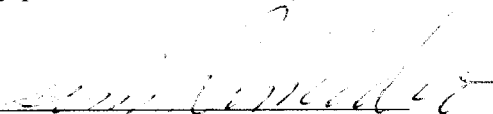
monoxide made more poisonous by the injector cleaner into that room, the placement of pictures with the remarks about going back to Africa and the posting of the computer print out of the modified picture of my house, made me realize that I was working in a hostile work environment and made me realize Columbia Motors Inc. was a hostile work environment and put me in fear of my life.

nnn. To the best of my knowledge, I was never the object of an Employee Disciplinary Report for being tardy to work.

3. I know of my own personal knowledge that the facts set out in this affidavit are true. I am competent to testify to facts set out in this affidavit. If I appeared as a witness in any aspect of this matter, I would testify consistent with the facts as set out in this affidavit.


Andre Tucker

Sworn to before me and subscribed in my presence, this 31st day of March, 2005.


Jim Rimedio, Lawyer
Notary Public - State of Ohio
My Commission has no expiration
date, Section 147.03 R.C.